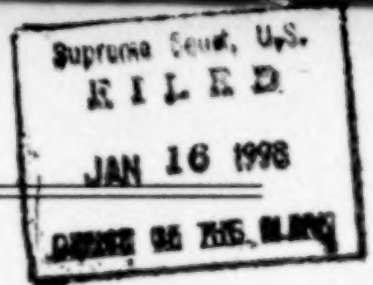


(3)
No. 96-1866



In The
Supreme Court of the United States
OCTOBER TERM, 1997

ALIDA STAR GEBSER and ALIDA JEAN McCULLOUGH,

Petitioners,

vs.

LAGO VISTA INDEPENDENT SCHOOL DISTRICT,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 23, 1996
CERTIORARI GRANTED DECEMBER 5, 1997

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Opinion of the United States Court of Appeals for the Fifth Circuit Dated February 24, 1997	11a
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APPENDIX A — RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
November 17, 1993	Plaintiffs Original Petition filed in Travis County District Court
December 16, 1993	Defendant Frank Waldrop's Answer filed
January 31, 1995	Plaintiffs First Amended Petition adding Defendant Lago Vista Independent School District filed
February 27, 1995	Defendant Lago Vista Independent School District's Answer filed
March 2, 1995	Petition for Removal to U.S. District Court for the Western District of Texas filed by Defendant Lago Vista Independent School District
April 13, 1995	Defendant Lago Vista Independent School District's First Amended Original Answer to Plaintiff's First Amended Original Petition filed
September 5, 1995	Plaintiffs' Second Amended Petition filed
November 3, 1995	Plaintiffs' Motion for Partial Summary Judgment filed

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November 6, 1995	Defendant Lago Vista Independent School District's Motion for Summary Judgment filed
November 17, 1995	Plaintiffs Response to Defendant Lago Vista Independent School District's Motion for Summary Judgment filed
November 20, 1995	Defendant Lago Vista's Independent School District's Response to Plaintiffs' Motion for Partial Summary Judgment filed
November 28, 1995	Summary Judgment granted for Defendant Lago Vista Independent School District
December 15, 1995	Federal causes of action against Defendant Frank Waldrop dismissed and remaining state law causes of action against said Defendant remanded to state court.
December 15, 1995	Final Judgment for Defendant Lago Vista entered
December 20, 1995	Order correcting clerical error in date of Final Judgment
January 1, 1996	Plaintiffs' Notice of Appeal to the United States Court of Appeals for the Fifth Circuit
February 24, 1997	Judgment affirmed by the U.S. Court of Appeals

**APPENDIX B — DEFENDANT'S FIRST AMENDED
ORIGINAL ANSWER**

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**CIVIL ACTION NO.
A 95CV 126 SS**

**JEAN DOE, AS GUARDIAN AND NEXT FRIEND OF JANE
DOE**

VS.

**FRANK NEWTON WALDROP, AND LAGO VISTA
INDEPENDENT SCHOOL DISTRICT**

DEFENDANTS FIRST AMENDED ORIGINAL ANSWER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES LAGO VISTA INDEPENDENT SCHOOL DISTRICT, one of the Defendants in the above styled and numbered cause, and reserving the right to file other and further pleadings, exceptions and denials, files this, Defendant's First Amended Original Answer to Plaintiff's First Amended Petition herein, and in support thereof would show unto the Court as follows:

I.

The Plaintiff's First Amended Petition fails to state a claim or cause of action against this Defendant upon which relief can be granted, and pursuant to Rule 12(b)(6), Defendant should be

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discharged promptly with its costs and Plaintiff's First Amended Petition held for naught.

II.

Defendant admits the allegations contained in paragraph one (1) of Plaintiff's First Amended Original Petition.

III.

Defendant is without sufficient information to admit or deny the averments contained in paragraph two (2) of Plaintiff's First Amended Petition.

IV.

Defendant is without sufficient information to admit or deny the averments contained in Plaintiff's First Amended Petition regarding the Plaintiff's age, when she first encountered FRANK WALDROP, and how she was introduced to Defendant WALDROP. Defendant admits Plaintiff was assigned to Defendant WALDROP's advanced social studies class as a ninth grade. Defendant admits Defendant FRANK WALDROP led a discussion group at Lago Vista High School.

V.

Defendant is without sufficient information to admit or deny the averments contained in paragraph four (4) of Plaintiff's First Amended Petition.

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VI.

Defendant denies there is a cause of action for negligent infliction of emotional distress under the law of the State of Texas. Defendant denies the rest of the averments contained in paragraph five (5) of Plaintiff's First Amended Petition.

VII.

Defendant denies the averments contained in paragraph six (6) of Plaintiff's First Amended Petition.

VIII.

Defendant admits Defendant WALDROP was licensed as a teacher by the State of Texas. Defendant denies the remainder of the averments contained in paragraph seven (7) of Plaintiff's First Amended Petition.

IX.

Defendant denies the averments contained in paragraph eight (8) of Plaintiff's First Amended Petition and further denies Title IX of the Education Amendments of 1972 are applicable herein.

X.

Defendant is without sufficient information to admit or deny the averments contained in paragraph nine (9) of Plaintiff's First Amended Petition.

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XI.

Defendant admits Defendant WALDROP was employed as a teacher by Defendant LAGO VISTA INDEPENDENT SCHOOL DISTRICT as alleged in paragraph ten (10) of Plaintiff's First Amended Petition. Defendant denies Defendant LAGO VISTA INDEPENDENT SCHOOL DISTRICT knew, or in the exercise of reasonable care should have known of Defendant WALDROP's alleged propensity to engage in improper relations with his female students, and denies Defendant LAGO VISTA INDEPENDENT SCHOOL DISTRICT's was negligent or grossly negligent in any manner in connection with Defendant WALDROP's alleged sexual abuse and harassment of Plaintiff.

XII.

Defendant denies the education amendments of 1972 as set forth in Plaintiff's First Amended Petition apply to this cause of action. Defendant denies the remainder of the allegations contained in paragraph eleven (11) of Plaintiff's First Amended Petition.

XIII.

Defendant denies the averments contained in paragraphs twelve (12) and thirteen (13) of Plaintiff's First Amended Petition.

XIV.

Defendant is without sufficient information to admit or deny the averments contained in paragraph fourteen (14) of Plaintiff's First Amended Petition.

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XV.

Defendant denies the averments contained in paragraph fifteen (15) of Plaintiff's First Amended Petition.

XVI.

Defendant denies Plaintiff is entitled to any of the relief requested in the prayer in Plaintiff's First Amended Petition.

XVII.

Defendant denies all Plaintiff's allegations not specifically admitted herein.

XVIII.

For further answer herein, if same be necessary, Defendant affirmatively alleges it is entitled to immunity from liability for all Plaintiff's State Tort claims alleged in Plaintiff's First Amended Petition under §101.001 et. seq. of the Texas Civil Practice and Remedies Code.

WHEREFORE, PREMISES CONSIDERED, Defendant requests the Court discharge this Defendant from all liability in the premises, that Plaintiff take nothing from this action against this Defendant, and that the Court award to this Defendant its cost and attorney's fees expended in the defense hereof and for such other and further relief, both general and special, at law or in equity, to which this Defendant may show itself justly entitled.

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Respectfully Submitted,

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 LAGO VISTA INDEPENDENT
 SCHOOL DISTRICT

**APPENDIX C —PLAINTIFFS' SECOND AMENDED
 PETITION FILED SEPTEMBER 5, 1995**

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TEXAS
 AUSTIN DIVISION

CIVIL ACTION NO. A-95CV-126-SS

JEAN DOE, AS GUARDIAN AND NEXT FRIEND OF JANE
 DOE, A MINOR

VS.

FRANK NEWTON WALDROP AND LAGO VISTA
 INDEPENDENT SCHOOL DISTRICT

PLAINTIFFS' SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Jean Doe, individually and as Next Friend of Jane Doe, and Jane Doe, Plaintiffs in the above styled and numbered suit, complaining of Frank Newton Waldrop and Lago Vista Independent School District, and for cause of action would show the Court as follows:

1.

PARTIES

Because of the sensitive nature of the facts made the basis of this suit, Jean Doe and Jane Doe appear pseudonymously, but their identity is well known to the Defendants and will be disclosed to the Court. Defendant Waldrop is an individual

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residing in Williamson County, Texas, who has appeared and answered **pro se**. Defendant Lago Vista Independent School District is a political entity located in Travis County, Texas, and has appeared and answered herein.

2.

JURISDICTION

Plaintiffs originally filed this action in state court, but Defendant LAGO VISTA INDEPENDENT SCHOOL DISTRICT removed it to this Court by correctly asserting that certain federal questions are raised by the allegations herein. Specifically, this suit arises in part under Title IX of the Education Amendments of 1972, §§901-909, as amended, 20 U.S.C.A. §§1681-1688, 28 U.S.C. 1983, and the United States Constitution, Amendment XIV.

3.

VENUE

The improper acts and wrongful conduct complained of herein occurred in Travis County, Texas, and venue is proper in the Western District of Texas, Austin Division.

4.

LIABILITY ALLEGATIONS

It became necessary to bring this action because of improper sexual contacts between Jane Doe, who at all times pertinent hereto was a minor, and Defendant Frank Newton Waldrop, who was employed as a teacher by the Lago Vista Independent School

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District. This sexual relationship began in the Summer of 1992, and continued until Defendant Waldrop was apprehended by an officer of the Lago Vista Police Department while in the act of sexually abusing the Plaintiff, then fifteen years of age, on January 22, 1993.

5.

Jane Doe was born June 11, 1977. She was thirteen (13) years of age when she first encountered Defendant Frank Waldrop. She was at that time in the eighth grade, participating in an honors class which was led by Defendant's wife, a teacher in the Lago Vista Independent School District Middle School. Mrs. Waldrop referred the minor Plaintiff to a discussion group in the high school which was led by Defendant Waldrop. The following school year, when Jane Doe was a ninth grader, she was assigned to Defendant Waldrop's Social Studies Class.

6.

Over the course of Jane Doe's freshman year in high school, while she was a member of his class, Defendant Waldrop singled her out for special attention and praise, and embarked on a scheme to seduce her. On one occasion, while they were having a private conference in his classroom, Defendant Waldrop flattered her on her maturity, as he had done before, and then suggested to her that their communication was more than they expressed verbally. On other occasions he complimented her physical appearance in a suggestive and seductive manner.

7.

This seduction continued, just before the Spring Break of

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that year, with a direct sexual overture which took place in the minor's home. That incident occurred after school, when Defendant Waldrop contrived to deliver a book to the minor for her to use in preparing a report for his class; he selected a time to do so when he knew that she would in all likelihood be at home alone. On this occasion, Defendant Waldrop suggested to Jane Doe that she was sending signals to him of a sexual or romantic nature. He then embraced and kissed her, and insinuated his hand under her clothing.

8.

Defendant Waldrop continued his pursuit of the minor Plaintiff throughout the remainder of the school year. The following summer he arranged to lead a discussion group at the Lago Vista High School, and invited Jane Doe to participate. This discussion group allowed Defendant Waldrop the opportunity to be alone with Jane Doe and to continue his pursuit and seduction of her. This culminated that summer in the initiation of sexual relations with the minor. These relations continued intermittently until Defendant Waldrop was apprehended in the act of intercourse with the minor by an officer of the Lago Vista Police Department in January, 1993.

9.

NEGLIGENCE AND INTENTIONAL INJURY

Defendant Waldrop's sexual exploitation and use of Jane Doe constitutes a negligent and/or intentional infliction of emotional distress, which proximately caused the damages alleged herein.

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10.

BATTERY

Defendant Waldrop's conduct constitutes a battery upon Jane Doe in that she was not legally competent to consent to the touching of her body, rendering him strictly liable to her for damages alleged herein.

11.

CIVIL RIGHTS

At all times pertinent hereto, Defendant Waldrop, was licensed as a teacher by the State of Texas, and occupied a position of trust and authority over the minor Plaintiff. Among his other duties, he was responsible for protecting her well-being. His sexual use and exploitation of the minor Plaintiff constitutes sexual harassment, in violation of her personal civil right to be free from such interference and in violation of the rights granted her by the Texas Constitution, Article I, §§3, 3a, the United States Constitution, Amendment XIV, and 28 U.S.C. 1983.

12.

TITLE IX [WALDROP]

Further, Defendant Waldrop's conduct constitutes a betrayal of the special relationship which exists between teacher and student and a violation of her rights to be free from sexual discrimination, guaranteed by Title IX of the Education Amendments of 1972, §§901-909, as amended, 20 U.S.C.A. §§1681-1688.

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13.

NEGLIGENCE AND GROSS NEGLIGENCE

[WALDROP]

In addition, Defendant Waldrop was negligent and grossly negligent in failing, after he first developed a sexual attraction for the minor Plaintiff, to seek professional medical and mental health care, in failing to avoid situations in which he would be alone with the minor Plaintiff and in failing to consider the harm that his sexual exploitation of her would cause.

14.

NEGLIGENCE [LAGO VISTA]

At all times pertinent hereto Defendant Waldrop was employed as a teacher by Defendant Lago Vista Independent School District (hereinafter referred to as Lago Vista ISD), and entrusted by that entity with responsibility for the education, care and nurturing of the students of Lago Vista ISD, including the minor Plaintiff. Defendant Lago Vista ISD knew, or in the exercise of reasonable care should have known, that Defendant Waldrop had a propensity to engage in improper relations with his female students, and was negligent and grossly negligent in its failure to supervise Defendant Waldrop and to provide students, including the minor Plaintiff, with adequate safeguards against such sexual abuse and harassment. The negligence of Defendant Lago Vista ISD was a proximate cause of the injuries and damages alleged herein.

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15.

TITLE IX [LAGO VISTA]

Defendant Lago Vista ISD is a recipient of Federal funds and is therefore subject to the Education Amendments of 1972, §§ 901-909, as amended, 20 U.S.C.A. §§ 1681-1688. Title IX of that act prohibits sexual discrimination and harassment based upon sex, and requires school districts to institute positive procedures, mechanisms and policies to eliminate and/or minimize such conduct. Defendant Lago Vista ISD failed to institute adequate procedures, mechanisms and policies and its failure allowed the sexual abuse, harassment and discrimination alleged herein to occur. Consequently, Defendant Lago Vista ISD is liable to the minor Plaintiff for the resulting injuries and damages.

16.

Further, Defendant Lago Vista ISD is strictly liable to the minor Plaintiff for the wrongful conduct of Defendant Waldrop, pursuant to Title IX, Education Act, *supra*. At all times pertinent hereto Defendant Waldrop was acting generally within the scope of the wide discretion that Defendant Lago Vista ISD allowed him, and at all times pertinent hereto Defendant Waldrop was using his position of authority over the minor Plaintiff as a means to extort sexual compliance, so that his conduct with respect to the minor Plaintiff amounts to *quid pro quo* sexual harassment.

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17.

ACTUAL DAMAGES

All such wrongful conduct of both defendants was the producing and proximate cause of actual damages to the minor Plaintiff of at least \$1,000,000.00, for which the Defendants are jointly and severally liable.

18.

EXEMPLARY DAMAGES

Further, Plaintiffs would show that Defendant Waldrop knew that his conduct created a high risk of serious injury to the minor Plaintiff and that his conduct was reckless and reflects such an entire want of care as to be the equivalent of conscious indifference of the rights, welfare and safety of the minor Plaintiff. Consequently, Defendant Waldrop should be made to pay exemplary damages, as a penalty on Defendant Waldrop for his wrongful conduct and as an example and caution to others against taking advantage of a position of trust and confidence with children such as the minor Plaintiff.

19.

Defendant Lago Vista ISD knew that its failure to adopt adequate procedures and safeguards to protect children from sexual exploitation and harassment created a high degree of risk of serious injury to the students of the district, and its failure amounts to a conscious disregard of the rights, welfare and safety of the rights of those children, including the minor Plaintiff. Consequently, the Defendant Lago Vista ISD should also be

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required to pay exemplary damages, as a penalty for its wrongful conduct and as an example and caution to other school districts.

PRAYER

WHEREFORE, PREMISES CONSIDERED, both Defendants having appeared and answered herein, Plaintiffs respectfully pray that upon final judgment they have judgment against both Defendants for their actual damages and for exemplary damages, with pre-judgment and post-judgment interest thereon at the lawful rates, together with their reasonable attorneys' fees and their costs of court, and such other relief, at law and in equity, to which the court and jury may find them justly entitled.

Respectfully submitted,

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By: Terry Weldon
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**APPENDIX D — DEFENDANT LAGO VISTA
INDEPENDENT SCHOOL DISTRICT'S MOTION FOR
SUMMARY JUDGMENT FILED NOVEMBER 6, 1995**

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**CIVIL ACTION NO.
A-95-CV- 126-SS**

**JEAN DOE, AS GUARDIAN AND NEXT FRIEND OF JANE
DOE, A MINOR, PLAINTIFFS**

VS.

**FRANK NEWTON WALDROP, AND LAGO VISTA
INDEPENDENT SCHOOL DISTRICT, DEFENDANTS**

**DEFENDANT LAGO VISTA INDEPENDENT SCHOOL
DISTRICT'S MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Now comes the Defendant LAGO VISTA INDEPENDENT SCHOOL DISTRICT (hereinafter LAGO VISTA) and, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, files this its Motion for Summary Judgment, and in support thereof would show unto the Court as follows:

I.

STATEMENT OF THE CASE

Plaintiff, JEAN DOE, as Guardian and Next Friend of JANE

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DOE, a minor, filed this lawsuit against FRANK NEWTON WALDROP (hereinafter WALDROP) and LAGO VISTA, claiming violations of state law, Title IX of the Education Amendments of 1972, 28(sic) U.S.C. § 1983, and the Fourteenth Amendment to the United States Constitution. As the basis for this lawsuit, Plaintiff contends that while a fifteen year old student at Lago Vista, she was seduced and eventually involved in a sexual relationship with one of her teachers, Defendant WALDROP. The physical sexual relationship between Defendant WALDROP and Plaintiff lasted from approximately early spring 1992 to January of 1993. The relationship ended when the Plaintiff and Defendant WALDROP were discovered in the act of intercourse by a Lago Vista Police Department Police Officer in late January 1993. Plaintiff does not allege, and the evidence will not support an allegation any sexual contact between Plaintiff and Defendant WALDROP took place on the campus of any LAGO VISTA school.

II.

Plaintiff alleges "Defendant LAGO VISTA knew, or in the exercise of reasonable care should have known, that Defendant WALDROP had a propensity to engage in improper relations with his female students, . . ." (Plaintiff's Second Amended Petition, ¶ 14.)

III.

Plaintiff alleges causes of action against LAGO VISTA for negligence, and for violations of the Education Amendments of 1972, §§ 901-909, as amended, 20 U.S.C.A. §§ 1681-1688. Plaintiff additionally alleges a cause of action for violation of Plaintiff's civil rights, (Plaintiff's Second Amended Petition,

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¶ 11). However, it is not clear whether Plaintiff limits the civil rights allegation to Defendant WALDROP. Plaintiff does not allege the violation of Plaintiff's civil rights was pursuant to any custom or policy on the part of the LAGO VISTA. However, Defendant will address that issue.

IV.

This Motion for Summary Judgment is based upon;

1. The affidavit of Virginia Collier attached to the Appendix as Exhibit "A" in support of Defendant's Motion for Summary Judgment, and incorporated herein for any and all purposes as though set forth verbatim;
2. the deposition excerpts from the deposition of Virginia Collier attached to the Appendix as Exhibit "B" in support of Defendant's Motion for Summary Judgment, and incorporated herein for any and all purposes as though set forth verbatim;
3. the deposition excerpts of Michael Riggs attached to the Appendix as Exhibit "C" in support of Defendant's Motion for Summary Judgment, and incorporated herein for any and all purposes as though set forth verbatim;
4. the deposition excerpts of Jill Peyton attached to the Appendix as Exhibit "D" in support of Defendant's Motion for Summary Judgment, and incorporated herein for any and all purposes as though set forth verbatim; and
5. the deposition excerpts of the Plaintiff attached to the Appendix as Exhibit "E" in support of Defendant's Motion for Summary Judgment, and incorporated herein for any and all purposes as though set forth verbatim.

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V.

**DEFENDANT LAGO VISTA IS IMMUNE
FROM LIABILITY FOR NEGLIGENCE**

Plaintiff contends Defendant LAGO VISTA "... was negligent and grossly negligent in its failure to supervise Defendant WALDROP and to provide students, including the minor Plaintiff, with adequate safe guards against such sexual abuse and harassment. The negligence of Defendant LAGO VISTA ISD was approximate cause of the injuries and damages alleged. . ." (§ 14, Plaintiffs Second Amended Original Petition.) LAGO VISTA would show the Court LAGO VISTA is immune from liability for claims of negligence pursuant to the provisions of the Texas Tort Claims Act. TEX. PRAC & REM. CODE ANN. § 101.051.

"The law is well settled in (Texas) that an independent school district is an agency of the state and, while exercising governmental functions, is not answerable for its negligence for a suit sounding in tort. See, e.g., *Braun v. Trustees of Victoria Independent School District*, 114 S.W.2d 947 (Tex. Civ. App. — San Antonio 1938, writ ref'd); *Coleman v. Beaumont Independent School District*, 496 S.W.2d 245 (Tex. Civ. App. — Beaumont 1973, writ ref'd n.r.e). The Texas Tort Claims Act was enacted in 1970, and §3 of that act provided for waiver of governmental immunity for the use of publicly-owned motor vehicles, premises defects, and injuries arising out of conditions or use of property. With respect to the liability of a school district, however, the legislature provided for a more limited waiver of immunity. Section 19A of the Act states that a

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school district's liability is limited to causes of action arising from the use of motor vehicles."

Barr v. Bernhard, 562 S.W.2d 844, 846 (Tex. 1978).

"The waiver of governmental liability provided for in the Texas Tort Claims Act is in the case of school districts restricted to causes of action arising from the use of motor vehicles. TEX. CIV. PRAC. & REM. CODE ANN. § 101.051 (Vernon 1986)." *Williams v. Conroe Independent School District*, 809 S.W.2d 954, 957 (Tex. App. — Beaumont 1991, no writ).

Additionally, there is no cause of action for negligence under 42 U.S.C. § 1983. See, *Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662, 88 L.Ed.2d 662 (1986).

VI.

**DEFENDANT LAGO VISTA IS NOT LIABLE
UNDER 42 U.S.C. § 1983**

Plaintiff additionally alleges very generally in ¶ 11 of Plaintiff's Second Amended Petition a cause of action for violation of Plaintiff's civil rights. Defendant is unable to discern from the pleading whether Plaintiff is attempting to allege a cause of action for violation of 42 U.S.C. § 1983 against Defendant LAGO VISTA based on the Second Amended Petition. Consequently, Defendant will address Defendant LAGO VISTA's liability under 42 U.S.C. § 1983. 42 U.S.C. § 1983 states:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state

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or territory, subjects, or causes to be subject, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, where other proper proceeding for redress.

In order to prevail on a claim against a school district under § 1983, the Plaintiff must prove three elements:

1. the Plaintiff possesses a Constitutionally protected right or Federal right;
2. the Plaintiff was deprived of that right under color of state law; and
3. the deprivation was caused by "official policy" of the school district.

Parratt v. Taylor, 101 S.Ct. 1908, 1913 (1981); *Monell v. Department of Social Services*, 98 S.Ct. 2018, 2038 (1978). The school district is entitled to summary judgment if any of those elements are missing. Defendant contends it is entitled to summary judgment in this action for the reason two of the elements are missing. First, Defendant WALDROP was not acting under "color of state law" at the time his actions were undertaken. "Section 1983 does not reach purely private conduct." *Hagerty v. Succession of Clement*, 749 F.2d 217, 221 (5th Cir. 1984). A public officials' private acts are not taken under color of state law when his act are "no different from those of any private citizen." *Smith v. Winter*, 782 F.2d 508, 512 (5th Cir. 1986). A state, its agencies, or its officials cannot be

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assessed liability for the acts of a private individual, except by fair attribution of those actions to the state. *Lugar v. Edmondson Oil Co., Inc.*, 102 S.Ct. 2744, 2753-54 (1982). In the instant case, none of the physical sexual relations between WALDROP and the Plaintiff took place on school property (Deposition of Plaintiff, pp 61-62); and there is no evidence that anyone at LAGO VISTA knew about the relationship between the Plaintiff and WALDROP (Deposition of Plaintiff, p. 64). In fact, the Plaintiff and WALDROP did everything they could to hide the relationship from the people at LAGO VISTA, as well as her own family (Deposition of Plaintiff, pp 64-66). Plaintiff was aware that if she would report the relationship to her family or to people in authority at LAGO VISTA, the relationship would end immediately (Deposition of Plaintiff, p. 67).

Secondly, there is no evidence LAGO VISTA was deliberately indifferent to the existence of a continuing, persistent wide spread practice of unconstitutional misconduct by school district employees, and that the Plaintiff was injured by unconstitutional acts pursuant to the boards custom. It is now clear under the Court's holding in *Doe v. Taylor Independent School District*, 15 F.3rd 433, 454 (5 Cir. 1994) that school districts can be held liable under § 1993 "... for supervisory failures resulting in the molestation of (a) student only if those failures 'manifested a deliberate indifference to the welfare of the school children.' " Prior to the decision in *Doe*, the 10th Circuit set out what Defendant believes to be the appropriate standard for a Plaintiff to hold a school district liable in a 1983 suit. In *Gates v. Unified School District No. 449*, 996 F.2d 1043, 1041 (10th Cir. 1993), the Court state:

"In order to hold the school district (board) liable in this 1983 suit, the plaintiff must establish the

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existence of a policy adopted by the board or the existence and maintenance of a board custom of failure to receive, investigate or act on complaints of violations of female students' constitutional rights to be free of sexual abuse at the hands of the district's employees. To establish a case based on custom, a plaintiff must prove:

(1) The existence of a continuing, persistent and widespread practice of unconstitutional misconduct by the school district employees;

(2) Deliberate indifference to or tacit approval of such misconduct by the school district's policymaking officials (board) after notice to the officials of that particular misconduct; and

(3) That the plaintiff was injured by virtue of the unconstitutional acts pursuant to the board's custom and that the custom was the moving force behind the unconstitutional acts.

Turning to the facts of the instant case, there is simply no evidence of the existence of a pattern of persistent and widespread unconstitutional practices that have become so permanent and well settled as to have the force and defective law. Nor is there evidence LAGO VISTA had notice of a pattern of unconstitutional acts, or displayed deliberate indifference or tacitly authorized the violation of Plaintiffs constitutional rights. Consequently, the Plaintiff has failed to show, and cannot show a custom or policy of deliberate indifference to, or tacit authorization of WALDROP's conduct on the part of LAGO VISTA. Indeed, the only evidence of knowledge on the part of

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the school district of "inappropriate behavior" on the part of WALDROP was met by an investigation by the secondary school principal, Michael Riggs. Upon receiving a complaint from a parent, Mrs. Anna Lee Tully, Mr. Riggs quickly initiated a parent/teacher's meeting to investigate the complaint by Mrs. Tully of inappropriate behavior on the part of Mr. WALDROP. In attendance at the meeting was Mr. and Mrs. Tully, WALDROP and the principal, Michael Riggs. (Deposition of Michael Riggs, pages 20-30; 35; 39-40). Nor was there any knowledge on the part of the superintendent of school district of inappropriate activity on the part of Mr. WALDROP prior to the discovery of the Plaintiff and Mr. WALDROP by the Lago Vista Police Department in January 1993. (Deposition of Virginia Collier, page 65) Dr. Collier also stated the policy in existence at LAGO VISTA at the time was to investigate allegations of inappropriate behavior as Mr. Riggs did in this instance. (Deposition of Virginia Collier, pages 66-72).

VII.

**DEFENDANT LAGO VISTA IS NOT LIABLE
UNDER TITLE IX**

Plaintiff alleges in her Second Amended Petition that Waldrop was acting within the scope of wide discretion LAGO VISTA allowed him, and thus, LAGO VISTA is strictly liable pursuant to Title IX for Waldrop's wrongful conduct. The relevant portion of Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681, reads:

- (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

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discrimination under any education program or activity receiving Federal financial assistance. . . .

"Program or activity" is defined in the statute as "all of the operations of a local educational agency . . . or other school system." 20 U.S.C. 1687 (West Supp. 1995). Additionally, the definition of "program or entity" does not include the agents of such an entity and ". . . common law agency principals do not apply to claims under Title IX." *Floyd v. Waiters*, 831 F. Supp. 867 (M.D. Ga 1993). In order to prevail, Plaintiff must prove LAGO VISTA acted with the intent to discriminate against her on account of her gender in a federally funded program. *Guardians Ass'n v. Civil Service Comm'n of City of New York*, 463 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986). Discriminatory intent must be shown. *Guardians Ass'n*, 463 U.S. at 607. There simply is no evidence LAGO VISTA had any intent to discriminate against Jane Doe based on her sex. Even assuming, for purposes of argument only, that Waldrop's actions constitute discrimination based on sex, Waldrop's actions were purely personal, and clearly outside the scope of his employment. In that regard, LAGO VISTA would show, that under Texas law, an employee's conduct occurs within the course and scope of the employment only when the act is in furtherance of the employer's business and for the accomplishment of the purposes for which the employee was hired. *Gifford-Hall & Company v. Moore*, 479 S.W.2d 711, 715 (Tex. Civ. App. - Tyler 1972, no writ.) When an employee departs from his work to accomplish a personal purpose not connected with the employer's business, the relationship of employer and employee is temporarily suspended and the employer is not liable for the employee's acts during the period of suspension. *Southwest Dairy Products Co. v. De Frates*, 132 Tex. 556, 125 S.W.2d 282, 283 (1939).

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When the deviation from the employer's business involves purely personal pursuits, the employer is not liable for injury resulting therefrom. *Mitchell v. Ellis*, 374 S.W.2d 333, 336 (Tex. Civ. App. - Fort Worth 1963, writ ref'd); *Hein v. Harris County*, 557 S.W.2d 366, 368 (Tex. Civ. App. - Houston [1st Dist.] 1977, writ ref'd n.r.e.). Thus, Waldrop's actions cannot constitute discrimination under a "program or activity" of LAGO VISTA. See *Floyd*, 831 F. Supp. at 877.

VIII.

CONCLUSION

In conclusion, Defendant LAGO VISTA contends that based upon the foregoing authorities, LAGO VISTA is immune from any negligence cause of action asserted by Plaintiff herein, and that Plaintiff has failed to prove any cause of action against Defendant under 42 U.S.C. § 1983, Title IX of the Education Amendments of 1972, 28(sic) U.S.C. § 1983, and the Fourteenth Amendment to the United States Constitution, and consequently Defendant is entitled to judgment as a matter of law in this case.

WHEREFORE, PREMISES CONSIDERED, Defendant LAGO VISTA INDEPENDENT SCHOOL DISTRICT, respectively prays this Court grant, in all things Defendant's Motion for Summary Judgment, and that Defendant recover its cost expended in the defense hereof, and for such other and further relief, both general and special, in law or in equity, to which Defendant may show itself justly entitled.

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Respectfully submitted,

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ATTORNEY FOR Defendant
LAGO VISTA INDEPENDENT
SCHOOL DISTRICT

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**APPENDIX E — PLAINTIFFS' RESPONSE TO
DEFENDANT LAGO VISTA INDEPENDENT SCHOOL
DISTRICT'S MOTION FOR SUMMARY JUDGMENT
FILED NOVEMBER 17, 1995**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CIVIL ACTION NO. A-95CV-126-SS

JEAN DOE, AS GUARDIAN AND NEXT FRIEND OF JANE
DOE, A MINOR

VS.

FRANK NEWTON WALDROP AND LAGO VISTA
INDEPENDENT SCHOOL DISTRICT

**PLAINTIFFS' RESPONSE TO DEFENDANT LAGO
VISTA INDEPENDENT SCHOOL DISTRICT'S
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Jean Doe and Jane Doe, Plaintiffs, and
respond to the Motion for Summary Judgment filed-herein by
Defendant Lago Vista Independent School District as follows:

1.

STATEMENT OF THE CASE

Plaintiffs agree that Defendant Lago Vista Independent
School District ("LVISD") has correctly stated the procedural

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posture of this case in the opening paragraphs of its Motion. Plaintiffs respectfully request that the Court, in considering the Motion and the arguments presented herein, consider not only the summary judgment evidence filed by Defendant LVISD, but in addition the excerpts from the deposition of Anna Tully, filed herewith as Exhibit A, and the deposition of Bill Mason, filed as Exhibit B. Plaintiffs additionally request that the Court, in considering this Motion, also refer to the depositions filed in conjunction with the Plaintiffs' own Motion for Partial Summary Judgment, and all of that summary judgment evidence is incorporated fully by reference herein.

2.

NEGLIGENCE AND GROSS NEGLIGENCE

As Defendant LVISD states, Plaintiffs had pleaded negligence and gross negligence on the part of that Defendant in its supervision of its teacher, Frank Waldrop. Plaintiffs concede that the State of Texas and all its political subdivisions, including independent school districts, are immune from suits based on negligence and gross negligence (absent certain waivers of that immunity by the Texas Tort Claims Act, none of which apply to these facts). For that reason, Plaintiffs agree that Defendant LVISD's Motion for summary judgment with respect to negligence and gross negligence should be granted.

3.

CIVIL RIGHTS ACTION

In addition to negligence, Plaintiffs also have alleged that Defendant LVISD's conduct, with respect to its supervision of

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Frank Waldrop, violated Jane Doe's rights pursuant to 42 U.S.C. §1983. In its discussion of this theory, LVISD acknowledges that pursuant to the majority's holding in *Doe v. Taylor Independent School District*, 15 F.3d 433 (5th Cir. 1994), school districts "can be held liable under §1993 '... for supervisory failures resulting in the molestation of (a) student only if those failures "manifested a deliberate indifference to the welfare of the school children." ' " quoted at page 7 of Defendant's Motion. By arguing that LVISD officials had no knowledge of Waldrop's sexual exploitation of Jane Doe, LVISD implies an innocence which is not supported by the record. Although those officials may have been ignorant of Waldrop's abuse of Jane Doe, they had been notified of his dangerous propensities to take undue liberties with female students. In October, 1992, after Waldrop had initiated the sexual relationship with Jane Doe, and before that relationship was discovered, Anna Lee Tully, the mother of one female student and the informal guardian of another, made a report to Michael Riggs, then Principal of Lago Vista High School. She reported that both girls were uncomfortable with off-color and suggestive remarks that Waldrop made to them, individually and in private as well as in the classroom context, to the extent that one of the girls was afraid to be alone with Waldrop. Additionally, she reported that Waldrop's conduct in a class consisting only of Jane Doe and one of the girls was particularly bothersome because of the sexual connotations of Waldrop's presentation. In response, Principal Riggs invited Mr. and Mrs. Tully to meet with Waldrop in Riggs's presence. At that meeting, Waldrop indignantly denied any impropriety. Tully deposition, p. 7, l. 11—p. 12, l. 20.

This denial was accepted at face value by Riggs, who undertook no independent investigation of the accusations, who failed to make any entry in Waldrop's personnel file concerning

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the accusations or the meeting, and who failed even to mention the accusation to his Superintendent, Virginia Collier, until **after** the exposure of Waldrop's abuse of Jane Doe. **Riggs deposition, p. 23, 1. 1 — p. 32, 1. 25** (The Riggs deposition is filed as Exhibit 3 to Plaintiffs' Motion for Partial Summary Judgment.) William Mason, testifying as an expert for the Plaintiffs regarding the standard of care applying to a school district in this circumstance, testified that at a minimum in such a situation the school district should have dismissed the teacher with pay or assigned the teacher to administrative duties not involving students, pending a formal investigation. **Mason deposition, p. 22, 1. 13 — p. 26, 1. 8.**

As the court stated in **Doe v. Taylor ISD, supra**:

[S]urely the Constitution protects a schoolchild from physical sexual abuse — here, sexually fondling a 15-year old school girl and statutory rape — by a public school teacher. . . . Thus, Jane Doe clearly was deprived of a liberty interest recognized under the substantive due process component of the Fourteenth Amendment. It is incontrovertible that bodily integrity is necessarily violated when a state actor sexually abuses a schoolchild and that such misconduct deprives the child of rights vouchsafed by the Fourteenth Amendment.

15 F.3d 443, at 451-52 (footnotes omitted).

In **Doe v. Taylor ISD**, the school administrators had received several reports regarding the culprit's misbehavior with the specific claimant. In this case, there are fewer reports and the reports relate directly to misbehavior with other students and

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only incidentally involved the minor plaintiff herein. Nevertheless, in this summary judgment proceeding it is clear that the pleadings and evidence raise a fact question concerning the test for institutional liability set out in **Doe v. Taylor ISD**:

- (1) the defendant [school district] learned of facts or a pattern of inappropriate sexual behavior by a subordinate pointing plainly toward the conclusion that the subordinate was sexually abusing the student; and
- (2) the defendant demonstrated deliberate indifference toward the constitutional rights of the student by failing to take action that was obviously necessary to prevent or stop the abuse; and
- (3) such failure caused a constitutional injury to the student.

15 F.3d 443, at 454.

Lago Vista Independent School District having been informed by Mrs. Tully of Waldrop's misbehavior toward and in the presence of Mrs. Tully's daughter and ward, and having been informed specifically that his conduct in the presence of Jane Doe was particularly inappropriate, demonstrated deliberate indifference. Principal Riggs's failure to do that which Mr. Mason testified should have been done may not have prevented but certainly would have arrested the injury that was being done to Jane Doe, perhaps at least sparing her the notoriety that resulted from the public disclosure of her victimization.

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4.

TITLE IX ACTION

Defendant LVISD apparently does not deny that by accepting federal funds it is subject to all the requirements of the federal Education Amendments. That it does receive such funding is fully established by the summary judgment evidence filed in connection with Plaintiffs' Motion for Partial Summary Judgment, and incorporated herein.

One would not know, from reading Defendant LVISD's discussion of the obligations imposed on school districts by Title IX of the Education Amendments of 1972, 10 U.S.C. Sec. 1681 (a), that the Supreme Court of the United States had issued an opinion relating to a school district's obligation to a female student when a male teacher has taken advantage of his position and sexually exploited that student. But the Court has written on the subject, and unequivocally established that a civil action for damages **against the school district** arises when that occurs. **Franklin v. Gwinnett County Public Schools**, 112 S.Ct. 1028 (U.S. 1992). The factual basis of that holding is remarkably similar to the facts proved herein, particularly in the summary judgment evidence tendered in connection with Plaintiffs' Motion for Partial Summary Judgment.

As more fully argued in Plaintiffs' Motion for Partial Summary Judgment, we believe that LVISD's liability under Title IX is established as a matter of law. At the very least, in view of the undisputed facts herein, a fact issue regarding its liability is present.

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5.

CONCLUSION

As stated above, we concede that Defendant LVISD is immune from complaints based on negligence and gross negligence. Having removed this suit to Federal Court, however, LVISD should not be allowed to evade its obligations arising under Federal law. Waldrop unquestionably abused and exploited a fourteen-year-old student and continued to do so for several months. He gained her confidence and had access to her solely as a result of the position of trust he occupied through LVISD. He was allowed to continue this pattern of exploitation and abuse even after a concerned parent made express and direct complaints concerning his conduct toward female students, some of which involved Jane Doe. LVISD's administrator, rather than investigating these complaints and removing Waldrop from the classroom as he should have, brushed them under the rug. This amounts to violations of Jane Doe's rights under the Fourteenth Amendment and under Title IX, and she is entitled to compensation for the resulting damages.

WHEREFORE, premises considered, Plaintiffs pray that Defendant Lago Vista Independent School District's Motion for Summary Judgment be DENIED.

Respectfully submitted,

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**APPENDIX F — FINAL JUDGMENT OF THE UNITED
 STATES DISTRICT COURT FOR THE WESTERN
 DISTRICT OF TEXAS, AUSTIN DIVISION
 FILED DECEMBER 15, 1995**

**IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TEXAS
 AUSTIN DIVISION**

NO. A 95 CA 126 SS

**JEAN DOE, AS GUARDIAN AND NEXT FRIEND OF JANE
 DOE**

VS.

**FRANK NEWTON WALDROP and LAGO VISTA
 INDEPENDENT SCHOOL DISTRICT**

FINAL JUDGMENT

BE IT REMEMBERED that by order dated November 28, 1995, the Court granted Defendant Lago Vista Independent School District's Motion for Summary Judgment as to all causes of action asserted against it by Jean Doe, as Guardian and Next Friend of Jane Doe, a minor. On December 1, 1995, the Court entered an order of dismissal without prejudice of all cross-claims asserted by Lago Vista Independent School District against Frank Newton Waldrop. By order dated this same day, the federal causes of action asserted by Plaintiffs Jean Doe, as Guardian and Next Friend of Jane Doe, a minor, against Frank Newton Waldrop were dismissed by request of the Plaintiffs and the remaining state law causes of action against Frank Newton Waldrop were remanded to state court. All claims before this Court having been disposed of or otherwise resolved, the Court enters the following final judgment:

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IT IS ORDERED, ADJUDGED, AND DECREED that Jean Doe, as Guardian and Next Friend of Jane Doe, a minor, TAKE NOTHING by her causes of action asserted against Lago Vista Independent School District, and that each party absorb its or her own costs.

SIGNED and ENTERED on this 15 day of November 1995.

s/ S. Sparks
UNITED STATES DISTRICT JUDGE

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**APPENDIX G — ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF
TEXAS, AUSTIN DIVISION FILED DECEMBER 20, 1995**

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NO. A95 CA 126 SS

**JEAN DOE, AS GUARDIAN AND NEXT FRIEND OF JANE
DOE**

VS.

**FRANK NEWTON WALDROP and LAGO VISTA
INDEPENDENT SCHOOL DISTRICT**

ORDER

BE IT REMEMBERED on this the 20th day of December 1995 it was brought to the Court's attention that a clerical error exists in the Final Judgment filed in the above-referenced matter on December 15, 1995. The Final Judgment states that it is "signed and entered on this 15th day of November 1995." The Final Judgment was actually signed and entered on the 15th day of December 1995.

Accordingly, pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, the Court enters the following order:

IT IS ORDERED that the Final Judgment in the above-styled and -numbered action is AMENDED and CORRECTED to reflect the true date it was signed and entered by this Court, December 15, 1995.

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SIGNED on this 20th day of December 1995.

s/ S. Sparks
UNITED STATES DISTRICT JUDGE

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**APPENDIX H — AFFIDAVIT OF VIRGINIA SUE
COLLIER WITH ATTACHMENTS
DATED NOVEMBER 3, 1995**

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**CIVIL ACTION NO.
A-95-CV-126-SS**

**JEAN DOE, AS GUARDIAN AND NEXT FRIEND OF JANE
DOE, A MINOR, PLAINTIFFS**

VS.

**FRANK NEWTON WALDROP, AND LAGO VISTA
INDEPENDENT SCHOOL DISTRICT, DEFENDANTS**

AFFIDAVIT

State of Texas §

County of Washington §

Before me, the undersigned authority, on this date personally
appeared VIRGINIA SUE COLLIER, who, being by me duly
sworn, deposed as follows:

"My name is VIRGINIA SUE COLLIER. I am over the age
of 21 years, of sound mind, fully competent to make this
affidavit, and I have personal knowledge of the facts stated herein
and that they are all true and correct.

'It is my testimony I was the superintendent of Lago Vista

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Independent School District from the years 1990 through 1994. As the superintendent of Lago Vista Independent School District, I was aware of the policies and procedures in effect at Lago Vista Independent School District during that period of time. As the superintendent of Lago Vista Independent School District, I was the custodian of the policies and procedures of the district. Attached hereto are ten pages of policies and procedures from Lago Vista Independent School District. These said ten pages of records are kept by Lago Vista Independent School District in the regular course of business, and it was the regular course of business of Lago Vista Independent School District for an employee or representative of Lago Vista Independent School District with knowledge of the act, event or policy recorded to make the records or to transmit information thereof to be included in such records; and the records were made at or near the time or reasonably soon thereafter. The records attached hereto are exact duplicates of the originals, with the exception of the first two pages of Butler exhibit 22 which are exact duplicates other than the name, position, address and telephone numbers are not completed. Otherwise they are exact duplicates of the records.

'It is further my testimony the written policy attached hereto and marked Butler Exhibit No. 9 was in fact the policy at Lago Vista Independent School District during the period from 1989 to 1993. The policies and procedures reflected in Butler Exhibits No. 7 and 22 evidence the policies that were in effect at Lago Vista Independent School District during the period from at least October, 1992 through January, 1993.

'The policy at Lago Vista Independent School District during my entire tenure from 1990 to 1994 there was that it was absolutely prohibited for teachers to engage in sexual contact

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of any description with students. I was unaware of any complaint or allegation prior to January 1993 of any inappropriate sexual comments, overtures or conduct toward any students, including the Plaintiff, by Frank Waldrop. The policy at Lago Vista Independent School District in the event of a complaint by a parent, student or a teacher of inappropriate comments or conduct on the part of a teacher would be to investigate the complaint.

'Further, affiant sayeth not.'

s/ Virginia Sue Collier
VIRGINIA SUE COLLIER

SWORN TO AND SUBSCRIBED before me on the 3rd day of November, 1995.

s/ Lois Helle
Notary Public for the State of Texas

My commission expires on October 31, 1996

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EMPLOYEE STANDARDS OF CONDUCT

* * *

SEXUAL
HARASSMENT

District employees shall not engage in sexual harassment of students. Sexual harassment includes such activities as engaging in sexually oriented conversations, telephoning students at home or elsewhere to solicit unwelcome special relationships, physical contact that would reasonably be construed as sexual in nature, and threatening or enticing students to engage in sexual behavior in exchange for grades or other school-related benefit.

20 U.S.C. 1681(a); Franklin v. Gwinnett County Public Schools, 112 S.Ct. 1028 (1992)

* * *

SEXUAL
HARASSMENT

A student or parent who has a complaint alleging sexual harassment or offensive intimidating conduct of a sexual nature may request a conference with the principal or designee. The principal or designee shall schedule and hold a conference with the student and/or parent within five days, and shall be responsible for coordinating an appropriate investigation of the complaint. The investigation shall ordinarily be completed within ten days. The student or parent shall be informed in the event of extenuating circumstances delaying the investigation.

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If the outcome of the investigation is not to the student's satisfaction, an appeal may be made in accordance with FNG (LOCAL) beginning at Level Two.

However, this procedure shall not have the affect of requiring a student alleging sexual harassment or offensive intimidating conduct of a sexual nature to present the matter to a person who is the subject of the complaint. The initial conference with the student ordinarily shall be held by the principal or designee who is the same gender as the student.

* * *

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[65] QUESTIONS BY MR. RALLS:

Q. Dr. Collier, I've got a few questions for you.

A. Okay.

Q. As you know, I'm Mark Ralls. I'm here representing Lago Vista Independent School District.

I want to ask you some questions, first of all, specifically with regard to Frank Waldrop and his conduct prior to January of 1993.

Prior to January of 1993, had you, as the Lago Vista Independent School District superintendent, gotten wind or heard rumors in any manner of Frank Waldrop engaging in any sort of improper conduct with students?

A. Absolutely not.

Q. Had you — had you been made aware by any source, whether it be students, faculty, staff, parents, law enforcement agencies, of the possibility that Frank Waldrop may be engaging in any sort of improper activities with his students?

A. No.

Q. Had you heard any rumors or insinuations of any inappropriate behavior on the part of Frank [66] Waldrop with his students?

A. No.

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Q. Had that occurred before January 22nd, 1993, the date of his arrest, what would Lago Vista Independent School District's response to that have been?

A. We would have immediately investigated.

Q. And if the investigation had, in fact, confirmed inappropriate conduct on Mr. Waldrop's part, what would the school district, pursuant to its policies, have done?

A. We would have pursued termination.

Q. Let me ask you to look at what has previously been marked as Butler Deposition Exhibit No. 9.

Do you know whether Butler Exhibit No. 9 was in effect at Lago Vista Independent School District from the period 1989 until 1992?

A. I have no reason to feel that it was not.

Q. Okay.

A. Yes. It would have been.

Q. Do you have an understanding, after reviewing Butler Deposition Exhibit No. 9, whether it applies to prohibit sexual contact, harassment, or any sort of offensive sexual conduct between [67] employees and employees, or also employees and students, that is, teachers and students?

A. It says, "Employees shall not engage in conduct constituting sexual harassment," and I would assume that to apply to everybody: Teachers, students, anybody.

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Q. All right. Whether it actually is read to apply to everybody or not, was that, in fact, the policy at Lago Vista Independent School District during the period 1989 to 1993?

A. Yes.

Q. That is that teachers would not engage in sexual contact of any description with their students?

A. Absolutely not.

* * *

**APPENDIX I — EXCERPTED DEPOSITION OF
STAR GEBSEY DATED AUGUST 16, 1995**

[commencing at page 22]

* * *

All right. Let me just go ahead and move sort of to your — how you met Frank Waldrop and that sort of thing. When was the first class that you had with Frank Waldrop?

A. Well, I met him before the first class with him.

Q. Okay. When did you first meet him?

A. The middle school and the high school basically share one campus. Commonly, students walk back and forth for a class in one building or the other. When I was in 8th grade, I was in the gifted and talented program in the middle school, which was taught by his wife.

[23] Q. And what is her name?

A. Trudy Waldrop.

Q. Okay.

A. We had a great books discussion group, and it became apparent that I was dominating the group because no one else either bothered to read the works or was willing to speak up about what they thought about them, so it was decided by both Ms. Waldrop and Mr. Waldrop and myself that it would be good for me to move up to the high school group because the discussions would be more on par. So I started attending the high school great books discussions, which were led by Mr. Waldrop.

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Q. And were those discussions that were held after regular school hours or during regular school hours?

A. No. They were during Lago's equivalent of home room.

Q. How long did you attend that discussion group with Mr. Waldrop?

A. I'm not really sure. Several weeks.

Q. Do you remember what part of the year it was that you began the discussion group in the [24] high school campus?

A. Not really.

Q. Do you remember how long you were actually with Trudy Waldrop's discussion group before moving to Frank Waldrop's discussion group?

A. I'm not sure.

Q. After the — after you moved into the 9th grade discussion group or high school discussion group with Frank Waldrop, did you — did you have any other contact with him, other than through that group, for the remainder of that school year?

A. Well, Lago's such a small school and the campus is so tiny that you can't help but see people in the halls and pass them and things like that, but other than just seeing him around the campus, no.

* * *

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[42] * * *

Q. Okay. When was the first time that he made a verbal advance, what you considered to be a verbal advance towards you?

A. Well, he didn't usually say things that were blatantly and obviously sexual. But through — he started doing it my freshman — the first half of my freshman year, and the second half of my freshman year, he had escalated it. He would make comments that he knew only I would understand, references to books, plays, theories and things that he knew I had researched and none of the others had. It was a small enough class that he knew us all very well. Sort of singling me out, and making it apparent that he thought that I was mentally much more mature than he believed the others to be.

Q. All right. Well, even in retrospect, you don't consider the fact that he considered you mentally more mature than the others to be sexually suggestive, do you?

A. Well, at the time I didn't, but he would make comments and things, just things like [43] comments about practicing Tantra magic and things like that that he knew no one else would understand. And when he made that particular comment, I had just finished a project on reincarnation, and I've always been sort of a student of — of miscellaneous religions. And Tantra was something that I didn't — you know, it was just a word. I didn't know what it meant, so at the time, I just smiled and pretended like I understood. And so at the time, that didn't really register to me as anything, except that he said it sort of oddly. And since thing, I've learned what Tantra really is, which is sex magic. And I guess that would be the first really screamingly blatant time that he made verbal advances toward me.

* * *

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[48] * * *

Q. Okay. When was the first time that — well, let's see if we can short cut this a little bit.

As I understand the history of the relationship with your relationship with Mr. Waldrop as far as the — what progressed into the sexual relationship, the first time that there was actually any overt attempt to engage you in any sort of physical activity was when he came to your house ostensibly to deliver a book?

A. Yes.

Q. And what happened on that occasion?

A. He came to the door. He — well, he drove up. He came to the door. His adopted son — I think his name's Augie (phonetic), was sitting in the car and he left him there. I think he had a book or something. I'm not sure. And I was home alone, and I went and answered the door, and I let him [49] in. And he had a book on the Celts that I had needed for a project that I was working on.

It was, I think, the day before he and several other of the students were going to leave on a trip to London and Paris. They were going to be gone for I think two weeks. And so he needed to give me the book that day or else I wouldn't have it for that whole long time period.

He handed me the book, and I can't remember exactly what was said, but basically, he, from what I can remember, told me that he knew that I was more mature than the others at the school or he told me that — he told me that — it's hard to remember.

He — I'll tell you what he did. I can remember that. He embraced me and kissed me, fondled my breasts. I was wearing

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a T-shirt and blue jeans, which is what I normally wore. He unzipped my pants and put his hands in and fondled my genitalia, with a technical speed. He told me he loved me and that — he said something about like how [50] he loved my peach fuzz or something like that while he was fondling me. I asked him repeatedly what about your son, who was sitting in the car outside, and he said, oh, Augie will be fine. He's got a book, or something like that. He wasn't real concerned. And basically, then he left to take his son home.

Q. All right. So let me make sure that — what I want to do is tie down the exact time frame of that. I think you have told Ms. Vasquez or Doctor Vasquez previously that that was right before spring break of your freshman year?

A. Yeah.

Q. Do you remember the date?

A. I've always been bad at remembering exact dates.

Q. Okay. Spring break of your freshman year would have been in the spring of 1992. Is that correct?

A. I think so.

* * *

[52] * * *

You knew at the time that Mr. Waldrop did that to you in your house that that was inappropriate conduct on his part?

A. Yes.

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Q. There was no question about that?

A. Yes.

Q. A teacher should not do that with his student.

A. Yes.

Q. You recognized that?

A. Yes.

Q. And you recognized that you could report that to your mother or your father?

A. Not really.

Q. All right. Did you recognize that you could report it to someone else at school?

A. Well, it was the — that incident was, at [53] the time, the first absolutely blatant, no questions, no mistaking, sexual advance that he had made towards me. The other things had all been double entendre and, quote, references, things like that. You know, the sort of thing that if you knew the references that he was making, you would understand, but if you didn't, it would seem innocent.

I was terrified. I had no idea what I was supposed to do. I had trusted him. I had believed him. I — you know, he was basically my mentor. And it was terrifying. He was the main teacher at the school with whom I had discussions, and I didn't know what to do.

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Q. And you didn't — it did not occur to you to report that incident to your parents?

A. No.

Q. Didn't even occur to you?

A. No. I was terrified.

Q. Did it occur — and it did not occur to you to report it to someone at the school in a position of authority?

A. No.

Q. [54] Is it your testimony that without some written instruction provided to you by the school that you wouldn't have the — the knowledge that was required to report that to either your parents or someone in the school?

A. I didn't know what I was supposed to do. I had heard — the only exposure to anything like that to even have the concept that that could happen was, you know, references on TV and stuff about female students marrying their professors. I had no idea that that stuff actually happened.

Q. Well, once you found out that it actually happened as it did in your situation, you didn't feel like you could report it to your parents?

A. No.

Q. Did you want to report it to somebody?

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A. I wanted to have somebody to help me figure out what I should do.

Q. All right. Did you discuss it with your friends?

A. The only person I discussed it with was Jimmy Navarro.

[55] Q. And when did you discuss it with Jimmy Navarro?

A. After the incident at my house and before he came back from Europe.

Q. Okay. Well, so within the next two weeks?

A. Yes.

Q. Okay. And who is Jimmy Navarro?

A. Jimmy Navarro is a man that I knew from school, is a class — not a classmate really but he attended the same school. He was a couple of years older. The reason I spoke to him was two main reasons. I knew that he was just about always brutally honest. Even when most people would lie to protect someone's feelings, he would tell you the truth. And because I knew that if I asked him to, I could probably trust him not to say anything to anyone.

* * *

[58] Q. All right. So at least — so you don't know [59] of anyone at Lago Vista that knew about that relationship at that point in time?

A. That's correct.

* * *

Appendix I

[60] * * *

Q. And — all right.

Okay. Other than Simon and Jimmy, do you know of anyone else that this incident was communicated to before January 1993?

A. No. If Mr. Waldrop told anyone, I wouldn't know about it, but that's as far as I know. And I don't know when Jimmy told Simon.

* * *

[61] * * *

Q. Okay. Was there ever an occasion that you [62] and Mr. Waldrop engaged in sexual intercourse at — on the grounds of Lago Vista High School or Junior High?

A. No.

Q. Was there ever an occasion when you had any sort of physical contact on the campuses of any Lago Vista Independent School District school?

A. No.

Q. No?

A. No.

Q. At any point — well, when was the first time that you, if you can put a date on it, actually had sexual intercourse with him?

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A. I'm not sure, but it was pretty shortly after they got back from Europe.

Q. So it was sometime in the early spring of 1992?

A. Yes.

Q. And how often would you have sexual intercourse with him?

A. At first it was pretty infrequent. Then for the summer — I had a great interest in taking AP classes, advanced placement. That's where you take a class in high school [63] and take a test and get college credit for it. He arranged to teach AP psychology and I think history, both, over the summer. Lago didn't have regular summer classes. This would be an informal group that met about once a week, and, you know, we'd read our books and write essays and things, and then when the time for the test came, we'd take it. We wouldn't have gotten high school credit for it, I don't believe.

There were, I think, two others originally who signed up to be involved in this class. Only one showed up for the first meeting, which was in Mr. Waldrop's room out at Lago. I don't think he ever, ever intended to actually teach the class. Eventually, I was the — well, after that first meeting, I was the only student who went. And basically, he would pick me up from my house about once a week with the — made comments about studying psychology, and would say it in such a way that it, to me and him, it was obviously just a different way of saying having sex.

And when the school year started up [64] again, I was in psychology and sociology with him. It was — I don't remember which was first and which was second, but one semester we

Appendix I

studied psychology and the next semester we studied sociology. And there were several other students in the class. The GT program that year had basically been gutted, so we didn't have like a specific class that we went to that was GT. And he would — either as I was leaving the class or as I was passing by in the hallway or things like that, he would sort of draw me aside and ask if my schedule worked out to study psychology that day, or something like that. And I basically just went along with what he said.

Q. All right. Did you have, at that time or in retrospect, any information that would lead you to believe that anyone at Lago Vista Independent School District knew about this relationship between you and Mr. Waldrop?

A. The sexual one or the one about having a summer class?

Q. The sexual one.

A. Not that I know of.

[65] Q. Is it your belief that Lago Vista Independent School District administration and people in authority over there should have known merely by virtue of the fact that you were the only one in his class that something was going on?

A. I think that they should have noticed that he was spending way too much time with me. I mean, then, it made me feel special. I thought, wow, you know, he actually thinks I'm intelligent enough to pay attention to me to give me all this special attention. In retrospect, I think that they — I mean, this should have been setting off sirens in their heads.

Appendix I

Q. And certainly, you could have set off all those sirens yourself. True?

A. Yes.

Q. And all you had to do was report it to someone. True?

A. Yes. But I felt that if I did that, then, one, I wouldn't — obviously, I wouldn't be in his class anymore and I wouldn't have, I guess, sort of the intellectual companionship that I was getting with him.

[66] Q. The reason you didn't report it is because you wanted the relationship to continue?

A. The intellectual one, yes. I wasn't real thrilled about the sexual one, but it seemed to me that that was a necessary component, and that if I was to blow the whistle on that, then I wouldn't be able to have this person as a teacher anymore. And that was my main interest in any relationship with him.

Q. And you did what you could to hide the relationship from your parents and the people at Lago Vista Independent School District?

A. Yes. Because I was ashamed of it. I felt like I had — I felt like in responding to the comments that he had made, trying to act like an adult, that I had sort of led him on, and I felt like I really sort of almost had a duty to go on and not, you know — to not be a tease. I felt like I had — at the time, I felt like I had been seducing him and that was why I had to go along and, you know, basically put my money where my mouth was.

* * *

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[67] * * *

Q. There's no question in your mind as you sit here today or even then, that if you were to report the relationship to your parents or people in authority at Lago Vista Independent School District, the relationship would end immediately?

A. Yes.

Q. And there's no question in your mind as you sit here today or as the — thinking back to that time of the relationship, that it was an inappropriate relationship?

A. Yes — I felt that it was inappropriate.

Q. And that teachers and students should not be doing that?

A. That's correct.

Q. And there's no question whatsoever that you [68] personally never reported the incident to anyone in a position of authority that could have done something about it?

A. That's correct.

Q. And there's no question that you needed that instruction, that is, that you could report it and should report it in writing, to report it?

A. I didn't know what I was supposed to do. I — I mean, Mr. Waldrop was the person in Lago administration, I guess, if you want to call it, who I most trusted, and he was the one that I would have been making the complaint against. I — I didn't know what I was supposed to do.

Appendix I

* * *

[69] * * *

A. Okay. I decided my sophomore year that I wanted to graduate a year early because it seemed to me that that would be a way that without being discovered, without bringing it to light, that I could get out of it without having his disapproval.

Q. So that you could end the relationship on your own. Is that what you're saying? If you did that, without incurring his disapproval?

A. Yes.

Q. Okay. But your intentions were to continue to keep the relationship secret?

A. I was ashamed of it and I didn't want anyone to know, yes.

Q. And part of the reason that you wanted to continue to keep the relationship secret is because you didn't want to go against the [70] wishes of Mr. Waldrop?

A. That's correct.

Q. And can you see as you sit here today, looking back, any circumstance that would have changed your intention to keep the relationship secret and go against the wishes of Mr. Waldrop?

A. If I had known at the beginning what I was supposed to do when a teacher starts making sexual advances towards me, I probably would have reported it. I was bewildered and terrified

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and I had no idea where to go from where I was. I was really depressed and, I mean, people around me were noticing that I was all freaked out and were asking me what was wrong, but I wouldn't tell anyone because I was — I didn't want anyone to know because I felt I had been leading him on and I felt ashamed.

Q. And you didn't want to go against the wishes of Mr. Waldrop?

A. Right then, if I had known what to do, I would have reported it, but I was so terrified, I didn't know what to do.

Q. You didn't even know to report it to your [71] parents?

A. No.

* * *

[75] * * *

Q. You never did believe, even when the [76] relationship was ongoing, that Lago Vista tolerated that sort of contact between teachers and students, did you?

A. I was never led to believe that, no.

* * *

[106] * * *

Q. Did you have a sexual relationship with Billy Barch (phonetic) before January 1993?

A. Yes.

Appendix I

Q. Who was Billy Barch?

A. Billy Barch is a guy I met at the Kerrville Folk Festival.

Q. And what — when was that that you met him?

A. It was the spring festival after the — [107] after Mr. Waldrop had made advances towards me my freshman year.

Q. So spring '92, the same — I mean, within the same time frame?

A. Yes.

Q. Okay. So within — or strike that.

So would it have been when Mr. Waldrop was in Europe that you met him?

A. No. It was after he had come back and after we had had a sexual relationship.

Q. After you and Mr. Waldrop had had a sexual relationship?

A. Yes.

Q. Okay. So you were — how many times did you have sex with Billy Barch?

A. I don't really know.

Q. More than once?

Appendix I

A. Yes.

Q. So is it true, then, that you and Billy Barch were having a sexual relationship at the same time you and Frank Waldrop were having a sexual relationship?

A. Yes. And, in fact, he — Mr. Waldrop encouraged me in it. He would say things like, I don't want to be your only lover, [108] just your best. Things like that.

Q. Would he encourage you to have sex with Billy Barch specifically, or would he just —

A. No. He had never met him.

Q. He didn't want exclusivity.

A. That's correct. And he made a point of saying that.

Q. So it wasn't that he was really encouraging you to have sex with a specific individual, it was just that he wanted you to feel free to have a relationship with someone else. Is that correct?

A. That is correct. And also, he implied that it would be sort of suspicious if I didn't have some other relationship that the world could know about.

Q. You didn't have the relationship with Billy Barch in order to cover up your relationship with Frank Waldrop, did you?

A. No.

Q. You would have had that relationship with Billy Barch

Appendix I

regardless of your relationship with Frank Waldrop, wouldn't you?

A. I don't really think so.

* * *

**APPENDIX J — EXCERPTED DEPOSITION OF
VIRGINIA COLLIER DATED JUNE 30, 1995**

[commencing at page 22] * * *

Q. During the time that you were superintendent of the Lago Vista district, who was the person who was designated — I think the correct terminology is the Title 9 coordinator?

A. Me.

Q. Okay. And so, if Mr. Butler says that that's his position now, then I'm going to gather that that's — the superintendent's job encompasses that obligation?

A. In a very small district, you don't really have [23] anyone else to give it to.

Q. And what does the superintendent — I mean — I'm sorry. What does the coordinator of Title 9 — what narrow responsibilities — of all the responsibilities of the superintendent, what does that entail?

A. That entails assuring that the laws related to — to Title 9 or that equity is — is there for students and teachers.

Q. Equity as — particularly as it relates to gender discrimination?

A. Particularly.

Q. It is true — is it true that Lago Vista district is the — was, at the time you were superintendent, recipient of federal funding?

A. We would have received cafeteria food money and special education, yes.

* * *

Appendix J

[25] * * *

Q. Narrowing the focus to issues related to sexual harassment, sexual exploitation, a term that may not exist in the category, but you understand what I mean?

A. Uh-huh.

Q. Seductive behavior by an adult toward a minor, [26] just for a shorthand definition of that terminology, have you attended specific programs that had that as a topic or the topic?

A. Yes.

Q. Did you attend such programs while you were superintendent of Lago Vista?

A. Yes.

Q. And can you tell us what you recall about those specific programs that you attended while you were a superintendent at Lago Vista?

A. As I recall, they were all done by attorneys.

Q. Which attorneys?

A. I — I would not recall.

Q. The district's attorneys?

A. One — one was the district's attorney, because we had the attorney come out to the district and do a special work session with all the staff, but —

Appendix J

Q. Was that before or after Mr. Waldrop's arrest?

A. That was after. That was after. Before, I would have attended at professional meetings like the superintendents summer conference, or the TASA/TASB conference that occurs every fall.

I had attended — I can't tell [27] you exactly how many — one or two sessions on sexual harassment. And those were, in my memory, generally done by attorneys.

Q. The thing you mentioned after Mr. Waldrop's address (sic), was that in a way of preparing the district — personnel of the district for what was feared to be a coming lawsuit by Jane Doe? Or was it a way of dealing with the issues that were raised in people's minds by the arrest of Mr. Waldrop?

A. It actually wasn't close to Mr. Waldrop. It didn't grow out of Mr. Waldrop's incident, per se, at all by itself. It was a response to both that incident and the Doe versus Taylor ruling.

Q. All right. Doe versus Taylor is a case that school administrators have all taken note of, I gather?

A. If you're smart.

* * *

[28] * * *

Q. Okay. Before Mr. Waldrop's address (sic), was there a person designated by the district — or more than one person, perhaps, designated by the Lago Vista district whose responsibility it was

Appendix J

to accept complaints or expressions of — of uncertainty by students who felt that they were the victims of sexual discrimination or sexual harassment in some fashion?

[29] A. The principals would have been the ones that a student would have gone directly to with that kind of complaint.

Q. Okay. Before Mr. Waldrop's address — arrest, was there any form of communication to the student body to alert them to the fact that if they felt that they were the victims of sexual discrimination, sexual harassment, sex abuse, that it was a principal of their school that they should go to with these complaints?

A. I don't know. That would have been a campus issue.

Q. It would not have been a district issue?

A. I would have expected it to be addressed by the principals. And whether they had it in their handbooks, whether they — the handbook would have been the logical place for it to be. I don't know.

Q. I was just going to ask you —

A. I don't remember. I mean, I'll look.

Q. I was just going to ask you if you recalled whether the handbook had any printed —

A. No.

Q. — information, during the time that you were superintendent, that alerted the students in [30] any fashion to any sort of reporting program or system?

Appendix J

A. I don't remember.

Q. Are you aware that Title 9 implementing regulations either recommend or require that there be such a system and that the students be informed directly of the system's existence?

A. If it was required, I think you'll find it in the handbooks.

Q. Okay. My question was: Are you aware of today whether Title 9's implementing regulations do require that?

A. No.

* * *

[52] Q. Day-to-day contact — conduct of his duties as a teacher, how much immediate supervision is there of a secondary school teacher in the Lago Vista district when you were there?

A. By the principal?

Q. By the principal or anyone in the administration?

A. By the superintendent, there would be little or none. By the principal, obviously, it's a small campus, and the principal is moving around the campus during the day, walking the halls, moving in and out of classrooms. It would be sporadic, I guess, would be the word.

Q. By the very nature of the teaching process, the teacher has a great deal of access to the students in a group context —

A. Correct.

Appendix J

Q. — and in a one-on-one context, correct?

A. Correct.

Q. And the teacher is allowed and encouraged, is he not, to exercise a good deal of discretion in the manner in which he deals with the students to maximize the possibility of them learning what they need to learn?

A. Yes.

[53] Q. Mr. Waldrop, I understand, and other teachers used the school facilities, the building and so forth, to conduct extracurricular activities after regular school hours with students?

A. Yes.

Q. And during the summer months?

A. To some degree, yes.

* * *

[79] * * *

Q. — I'm not arguing with you. But would you agree with me that if there had been such a complaint by a parent, even if — even if the school official had been unable to substantiate that complaint, prove it, and had not informed you before January of '93, that school official certainly should have notified you of that complaint after January of '93?

A. Yes.

Appendix J

MR. RALLS: Let me just object as to it being vague.

THE WITNESS: I would assume that yes. I would have expected to be notified if there had been a complaint. Mr. Riggs and I went back over every complaint I [80] think he'd ever had about Frank Waldrop, reviewing those after the fact, trying to see if we'd missed something that was in there. So I can't imagine that there was something we didn't discuss.

**APPENDIX K — EXCERPTED DEPOSITION OF
MICHAEL RIGGS DATED AUGUST 28, 1995**

[Commencing at page 4]

* * *

Q. All right. What is your employment?

A. I'm the secondary school principal at Lago Vista Independent School District.

* * *

[20] * * *

Q. Was there ever an occasion in which any parent ever made any complaint to you with respect to Mr. Waldrop's manner or presentation to his classes?

A. Yes.

Q. When?

A. Let's see. I think this was — it was in the fall. Probably latter part of October.

Q. Of '92?

[21] A. Yes.

Q. Was it — are we talking about a single incident or more than one incident?

Appendix K

A. Single incident.

Q. And who complained?

A. Anna Lee Tully.

Q. Did she call you on the phone, or did she come to your office?

A. As I recall, I believe she called me on the phone, and to —

Q. And what did she say?

A. She was concerned about some remarks made in the classroom that she felt was inappropriate.

Q. And she's the parent of?

A. Angie Marchitto and Lisa Marchitto.

* * *

Q. And can you recall what exactly it was that they said that Mr. Waldrop had said?

A. He had made remark such as — and I don't think [22] it was specifically to Angie. I think Angie just was basically offended by the remark.

But he made a remark toward a girl student that she had filled out over the summer, and a remark toward a boy student, something about the size of the belt buckle.

Appendix K

Q. Well, I can see how a girl might take offense at someone remarking out in the open that they had filled out over the summer depending on how that was said. But what is it about a belt buckle that they said was offensive?

A. I think that there was some, I assume, interpretation on their part that it had anything to do (sic) with what was under the belt buckle. They didn't get specific.

Q. You're referring to a comparison between a belt buckle and a sexual organ or an abdomen?

A. I assume. It wasn't discussed any further than that.

Q. And this was all conveyed to you by Mrs. Tully on the telephone?

A. I think she called on the telephone. We did have a parent meeting.

Q. There was an actual meeting?

A. Yes.

[23] Q. How soon after the call?

A. I don't remember the exact time relationship. Within the next day, probably. Next day or two. We scheduled a meeting with Mr. and Mrs. Tully and Mr. Waldrop during his conference period at school.

* * *

Appendix K

[26] * * *

Q. Okay. So then the meeting took place in your office?

A. In my office.

Q. And what happened?

A. We sat around the round table and made the appropriate introductions, make sure everybody knew who each other was. They cordially greeted each other.

Then I indicated that, you know, "The reason we're gathered here is because Mrs. Tully had some concerns over remarks that were said in the classroom, and I wanted her to be able to convey these to you personally and have you respond to those."

So at that time, Mrs. Tully indicated, you know, her concern over these kind of remarks being made.

Q. And how did Mr. Waldrop react to that?

A. He basically indicated that, he said, "Well, I didn't mean to say anything that would be [27] offensive to anybody, and if I did offend anybody, you know, I apologize for it."

Q. Did he acknowledge having used basically the terminology that was quoted to you, or did he deny that?

A. He didn't really deny it, but he basically just like I had indicated, you know, said, "I just didn't think that anything I had said was offensive, and you know, if I offended, you know, the girls by it, I apologize for it, and it won't happen again," something like that.

Appendix K

Q. How long did this meeting occur or take place?

A. Oh, I'm sure 40, 45 minutes probably, just 30 — 30 to 45, just discussion back and forth. I don't recall a great deal of the content of it, but that was basically what it revolved around.

* * *

[28] * * *

Q. Did you express an opinion either at the meeting or at any time before or after the meeting to Mr. Waldrop about your opinion of the propriety of the kind of remarks that he was accused of having been made — having made?

A. Yes. I just indicated to him that, as a teacher, you need to be careful of the type of remarks that you do make. They may or may not be considered offensive to students. And when you make a remark that may or may not allow them to look on one side or the other of it, generally speaking, you know, they probably would look at the derogatory connotation of the remark, and so, you know, I would encourage him not to make those kind of remarks in the [29] future. And he seemed to be very conscientious of that.

Q. Well, are you telling us that your own personal opinion was that the remarks were improper or that they were just ill-advised because they were capable of being misinterpreted?

A. I would think ill-advised. It's better not to make them at all so that they wouldn't be construed to be one way or the other.

Q. One way or the other?

Appendix K

A. Well, improper. Somebody may take it complimentary, and others might be offended by it. That's all I meant.

* * *

[30] * * *

Q. Did you consider it a sign of concern that a teacher of Mr. Waldrop's maturity and experience would need to have something like that conveyed to him — some information like that conveyed to him?

A. I suppose so.

Q. Did you express that concern to him?

A. No, not in that regard, no.

Q. Did you express that concern to anyone else?

A. No.

Q. Was it surprising to you that a person of his maturity and years of experience in the military and years of experience teaching should have to have something like this told to him?

A. Yes.

Q. Mr. Riggs, I've early on asked to get the entire personnel file of Mr. Waldrop from the school district and was given a considerable stack of paper, but there is no indication of this meeting in that stack of paper.

Can you tell me whether the notes about this meeting were

Appendix K

withheld from [31] that or whether there were no notes in his personnel file?

A. I don't recall taking specific notes at the meeting.

* * *

Q. Do you think that the fact that a meeting like this occurred should or should not go into a teacher's personnel file?

A. Possibly it should go in there, but I didn't do any — I don't recall making a written record of the meeting other than informing the superintendent that the meeting had taken place.

Q. Say that last part again. I didn't understand it.

A. Other than informing the superintendent that the meeting had taken place, that I had requested that they have a parent/teacher conference.

Q. I was going to ask you about that as well. But [32] I just want to be clear with you that there was no written record concerning this parent/teacher conference ever made by you or by anyone else to your knowledge; true statement?

A. Yes.

Q. Okay. Now, you testified that you did, however, make this conference — make Virginia Collier aware of this conference?

A. Yes. After this other situation came up with Jane Doe.

Q. Not until after Frank Waldrop's relationship with Jane Doe was disclosed?

Appendix K

A. Uh-huh.

Q. Is that — you have to give us a yes or a no.

A. Yes.

Q. Why did you not see fit to report it to the superintendent before that?

A. I didn't feel like that, at the time, that it was that — that significant. I just felt like something that — I should handle it in my office with the parent and the teacher involved. And I felt like that, after the meeting that we held, that, you know, that that situation was resolved.

* * *

[35] * * *

Q. When did you first become aware of any relationship between Mr. Waldrop and Jane Doe?

A. When the incident of concern took place.

Q. When you were notified that they were arrested —

A. Yes.

Q. — or he was arrested?

A. Yes.

84a

Appendix K

Q. Did you learn that the day of the arrest?

A. Day of the arrest.

* * *

85a

**APPENDIX L — EXCERPTED DEPOSITION OF
ANNA LEE TULLY DATED SEPTEMBER 28, 1995**

[Commencing at page 5]

* * *

Q. Okay. When you lived in Lago Vista, tell us who were the members of your household?

A. We have five children and at various times some or all of them were with us. We also had two girls living with us who were not our children at part of that time, and one of them was a student in the school district in Lago Vista. Her name is Erica Neil.

Q. And what were the circumstances that led to her [6] living with you?

A. Erica moved to Lago Vista with her mom after her parents divorced, and was in high school there, and making very good grades. Her mom remarried and was transferred to, I believe it was, Michigan. And because Erica was aiming for valedictorian, she wanted to stay in the Lago Vista school district. And she was a good friend of one of my daughters, and we thought a lot of her, so we invited her to stay with us for her last two years of high school.

Q. Now, what two years were those?

A. Her junior year and senior year, I believe that was '92-'93 and '93-'94 school year,

Q. And the daughter that Erica Neil was close to, what was her first name?

Appendix L

A. Her name is Angie. They were classmates.

Q. And during that '92 through '94 period, did you have other daughters living at home who were in the Lago Vista High School?

A. Yes, our youngest daughter is Lisa. Both Lisa and Angie have the last name of Marchitto, MARCHITTO. And they're known by that name at school.

Q. All right. Now, during the period that we're [7] talking about, were you acquainted with a teacher in the Lago Vista district known as Frank — Frank Waldrop?

A. Yes, sir.

Q. And what was the basis of that acquaintance?

A. He was — all three of our children were in his class at some point in time.

Q. All right. Did you know him on any other basis than as this teacher of your daughters?

A. I only knew him through the school.

Q. All right. Did there come a time that any of the three girls living in your home and attending Lago Vista schools came home and made a report to you about something that had happened in school that one or more of them felt was inappropriate?

A. Yes.

Appendix L

Q. Can you remember approximately when that was?

A. Yes, it was at the beginning of the fall, 1992-'93 school year which was Angie and Erica's junior year of school. And specifically a couple of days — a couple of days before school started.

Q. Okay. So —

A. During the registration time.

[8] Q. Sometime in September, early September?

A. It was probably the end of August.

Q. All right.

A. Just before school started.

Q. And you said it was Angie and Erica's what year in school?

A. Junior year.

Q. All right.

A. Lisa was a sophomore.

Q. Did the two girls together make some sort of report to you or was it one or the other of them, or —

A. At this time it was Angie.

Q. All right. What did Angie tell you?

Appendix L

A. She said that when she went up to the school to check her schedule, she was crossing the parking lot and had some books in her hand and Mr. Waldrop met her and looked her up and down and said, "Haven't you filled out?"

Angie said, "I might have gained a little weight," she's extremely skinny.

And he said to her, "That's not what I mean." She reported to me that that made her feel very uncomfortable. And —

Q. How soon after this incident did Angie talk to [9] you about it?

A. I — I think: that she did not tell me about it at that time, it was later, probably around the beginning of October when she told me about it.

Q. Was there any other report from any of the other girls relating to anything that made them uncomfortable at school?

A. Yes.

Q. In the fall of '92?

A. Yes.

Q. Who was involved in this incident?

A. Both Lisa and Erica also commented, Lisa was the first to comment. And then — and that's the time that Angie reported what I've just told you, and Erica also gave us some information.

Appendix L

Q. Okay. Let's just start with Lisa. What did Lisa tell you?

A. Lisa reported that whenever Mr. Waldrop looked at her, she felt like he was looking at her up and down. She came home from school this particular day and I think — think it was in October, and said that she had been assigned a D-hall class after school for that day. But when she saw that Mr. Waldrop was the teacher [10] on duty, she did not stay. She just left and came home.

She said, "Mom, I'm not going to stay in the room with him because I feel uncomfortable with him. And I didn't want to run the risk of being the only student there," being a small school district, probably very few kids would be there that day. She not know whether or not she might be the only one.

And I said, "Why does he make you feel uncomfortable?"

And she said, "Because when he looks at me, he looks me up and down and looks like he's looking straight through me".

Q. What — excuse me, I may have interrupted you, did Lisa report any suggestive remarks or any comments had been made by this teacher?

A. Well, yes. I was trying to get some information out of her to understand why she felt this way. And she said, "Well" — I said, "Well, has he ever said anything to you?"

And she said, "Not to me specifically," but she said, "At the end of school last year, one day in class he made a comment to the boys in front of the entire [11] class and said 'does the size of your belt buckle determine the size of what's underneath it'".

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Q. And this was — would have been the spring of — spring of '92, I gather?

A. Yes.

Q. Now, you mentioned that Erica also made some comment or some report to you, is that — did I understand that correctly?

A. Right.

Q. What did she report?

A. She was in a class at this time in October of '92 for gifted students. And she — there was one other person in her class and it was the person Jane Doe.

Q. Okay.

A. Excuse me, I'm very dry. She said that — I was — I was questioning her — questioning all three of the girls because they weren't offering information and I was wanting to know why they felt uncomfortable. And she said that Mr. Waldrop hadn't really — had not really taught nor tested them yet. And that in the class most of the time was spent in conversation. And much of that was strange and [12] uncomfortable to the point of having sexual connotations as well as telling off-colored jokes and stories that Mr. Waldrop found very amusing, but that made she, Erica, feel very uncomfortable.

Q. Who all was in this class besides Erica and Jane Doe, what other students?

A. That was it.

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Q. Just the two of them?

A. Uh-huh.

* * *

Q. After getting this information, did you discuss it with your husband?

A. Yes.

Q. And did you and he then, together, take any action with respect to the information or the [13] reports that the girls had made to you?

A. Yes.

Q. What action?

A. We called Mr. Riggs, the school principal, and I set up an appointment to talk to him. And we did go to see him one morning.

Q. Did you meet with him in his office?

A. Yes.

* * *

[14] * * *

Q. All right. Now, what did you tell Mr. Riggs or [15] what did

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you and your husband tell Mr. Riggs and Mr. Waldrop was the reason that you were concerned or upset?

A. The reason was because of some — some complaints that Angie and Erica and Lisa had made against Mr. Waldrop's treatment of them.

Q. And did you tell them not just generally speaking that the girls had made complaint, did you tell them what the complaints were?

A. Yes.

Q. And did you tell them in more or less the same terms that you just described it to us, and to the ladies and gentlemen of the jury?

A. Yes.

Q. Is there any doubt in your mind that Mr. Riggs understood the information that you were conveying to him?

A. None.

Q. Okay. And what was their reaction to this information?

A. Well, Mr. Riggs' reaction was what I would have expected of any school principal. He — he told us that he would discuss the matter with Mr. Waldrop and for us to let him know if we had any more concerns, or if anything else [16] happened. And Mr. Waldrop —

Q. Let me — let me interject the question. What was Mr. Waldrop's reaction?

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A. His reaction was — let's see. He seemed shocked, and insulted, and he just couldn't imagine that anybody would make such a claim.

Q. Did he suggest the girls had just fabricated these remarks, or did he suggest that he had been misunderstood?

A. I think he worded it that maybe — I think he thought they were lying. He thought they were lying, and didn't know why they would lie about that.

Q. Was Mr. Waldrop convincing in his protests, in his denial of having done or said anything improper?

A. Not to me.

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